

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

MAY 9 2002

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY *Ref* DEPUTY CLERK

DERRICK W. BUNTON

V.

COMMUNITY OPTIONS, INC. OF TEXAS

CIVIL ACTION NO. **A02CA 305H**

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NOTICE OF REMOVAL

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TO THE HONORABLE U.S. DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Community Options, Inc. (incorrectly referred to in Plaintiff's petition as Community Options, Inc., of Texas) submits this Notice of Removal and would show the Court as follows:

1.

On or about March 4, 2002, a civil action was commenced by Derrick W. Bunton ("Plaintiff") against Community Options, Inc. ("Defendant") in the District Court of Travis County, Texas, 200<sup>th</sup> Judicial District. Plaintiff first served Defendant with a copy of the petition on April 11, 2002. Community Options, Inc. filed its answer in State District Court on May 6, 2002. This Notice of Removal is timely filed under 28 U.S.C. §§ 1446 (b).

2.

Plaintiff asserts claims of race and color discrimination, constructive discharge, retaliation, slander, intentional infliction of emotional distress, libel and tortuous interference with prospective business relationship. Plaintiff is seeking damages in the amount of \$1,000,000.00 or more as set out in Plaintiff's petition.

3.

Plaintiff is a resident of the State of Texas. Community Options, Inc., the only defendant, is not a citizen of the State of Texas. Community Options, Inc. is a New Jersey corporation which is incorporated in and has its principal place of business in New Jersey. Thus, this suit is a controversy between citizens of different states and no defendant is a citizen of the State of Texas.

4.

This lawsuit is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332 and is one which may be removed to this Court by Defendant pursuant to 28 U.S.C. §1441.

5.

Copies of all citations, petitions, and other pleadings filed in this case in the state district court are attached hereto.

6.

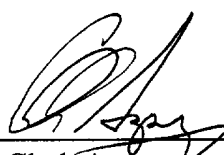
Defendant will file a copy of this Notice in the District Court of Travis County, Texas, 200<sup>th</sup> Judicial District and give written notice to the Plaintiff promptly after filing this Notice.

WHEREFORE, Defendant Community Options, Inc., by filing this Notice of Removal, hereby removes the civil action filed in the District Court of Travis County, Texas, 200<sup>th</sup> Judicial District to the United States District Court for the Western District of Texas, Austin Division.

Respectfully submitted,

NAMAN, HOWELL, SMITH & LEE, P.C.  
8310 Capital of Texas Highway North, Suite 490  
Austin, Texas 78731  
Telephone No.: (512) 479-0300  
Telecopier No.: (512) 474-1901

BY:

  
\_\_\_\_\_  
P. Clark Aspy  
State Bar No. 01394170

NAMAN, HOWELL, SMITH & LEE, P.C.  
900 Washington Avenue, 7<sup>th</sup> Floor  
P.O. Box 1470  
Waco, Texas 76703-1470  
Telephone No.: (254) 755-4100  
Telecopier No.: (254) 754-6331

John T. Hawkins  
State Bar No. 09249300

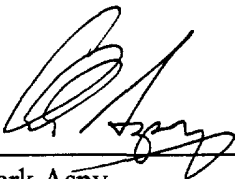
**ATTORNEYS FOR DEFENDANT  
COMMUNITY OPTIONS, INC.**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing *Notice of Removal* has been sent by certified mail, return receipt requested, to Plaintiff's attorney of record on this 9<sup>th</sup> day of May, 2002.

**CMRRR# 70010320000482684353**

W. Bailey Barton  
W. Bailey Barton, PLLC  
300 C. M. Allen Parkway, Suite 100  
San Marcos, Texas 78666

  
\_\_\_\_\_  
P. Clark Aspy

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CIV205

CKET DETAIL

T R A V I S C O U N T Y  
DISTRICT COURT MANAGEMENT SYSTEM

MAY 8, 2002

TIME: 15:28

REQ. CLERK: AC

CAUSE NUMBER : GN200721  
 DST CLK STAT : PENDING  
 ORIG. FILING : 03/04/2002  
 TYPE OF SUIT : DISCRIMINATION  
 COURT ASSIGN : 200th District Court  
 JURY FEE PAID: YES  
 CT. ADM. STAT: ACTV

A02CA 305H

DERRICK W. BUNTON  
 vs  
 COMMUNITY OPTIONS INC. OF TEXAS

&gt;&gt;&gt;&gt;&gt;&gt;&gt;&gt;&gt;&gt; I N V O L V E D P A R T I E S &lt;&lt;&lt;&lt;&lt;&lt;&lt;&lt;&lt;&lt;

## TYPE:

&gt;&gt;&gt; PLAINTIFF

P01 : DERRICK W. BUNTON

PA01: W. BAILEY BARTON

300 C.M. ALLEN PARKWAY, STE. 218

BAR # 00790134

SAN MARCOS, TX 78666

&gt;&gt;&gt; DEFENDANT

D01 : COMMUNITY OPTIONS INC. OF TEXAS

DA01: P. CLARK ASPY

221 WEST SIXTH STREET, SUITE 1900

BAR # 01394170

AUSTIN, TX 78701-3485

&gt;&gt;&gt;&gt;&gt;&gt;&gt;&gt;&gt;&gt; I S S U A N C E / S E R V I C E &lt;&lt;&lt;&lt;&lt;&lt;&lt;&lt;&lt;&lt;

ISS/FILE DATE	SRV/RTN DATE	S B	P B	CLRK INIT	DESCRIPTION OF SERVICE	SEQ NUM
030502				CR	Citation/Iss & Serv (Precinct5) 001 COMMUNITY OPTIONS INC. OF TEXAS 1312 Mesquite Rd. Cedar Park, Texas 78613	
041802	041102	5		CR	Citation Executed Community Options Inc. of Texas By Delivery to Mary Marshall, Acting Director	

&gt;&gt;&gt;&gt;&gt;&gt;&gt;&gt;&gt;&gt; P L E A D I N G S &lt;&lt;&lt;&lt;&lt;&lt;&lt;&lt;&lt;&lt;

FILED DATE	CLRK INIT	DESCRIPTION OF PLEADINGS
030402	CR	Original Petition
050602	CR	Defendant Community Options Inc.'s Original Answer

*dict/8/01*CITATION  
THE STATE OF TEXAS

Cause No. GN200721

DERRICK W. BUNTON

, Plaintiff

vs.

COMMUNITY OPTIONS INC. OF TEXAS

, Defendant

To: COMMUNITY OPTIONS INC. OF TEXAS

1312 Mesquite Rd.

Cedar Park, Texas 78613

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A. M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the ORIGINAL PETITION

of the PLAINTIFF in the above styled and numbered cause, which was filed on the 4th day of March, 2002, in the 200TH Judicial District Court of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, this the 5th day of March, 2002.

REQUESTED BY:

W. BAILEY BARTON

300 C.M. ALLEN PARKWAY, STE. 100

SAN MARCOS, TX 78666

(512) 396-5234

AMALIA RODRIGUEZ-MENDOZA

Travis County District Clerk

Travis County Courthouse

1000 Guadalupe, P.O. Box 1748

Austin, Texas

BY

CHRISTINA RAMIREZ, Deputy



----- RETURN -----  
 Came to hand on the 5 day of Mar. 02 at 3:44 P.M., and executed at Austin TX 78705 within the County of Travis on the 11 day of April 02 at 4:51 o'clock P.M., by delivering to the within named Community Options Inc. of Texas by delivering to Mary Marshall, Acting Director, each in person, a true copy of this citation together with the accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ \_\_\_\_\_

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NOTARY PUBLIC, THE STATE OF TEXAS

Original Copy

Constable Precinct 5

PRINCE ELEANT  
 CONSTABLE PREC. 5, TRAVIS COUNTY, TEXAS

SHERIFF/CONSTABLE/AUTHORIZED PERSON

BY:

DAVID BINTLIEF

PRINTED NAME OF SERVOR

County, Texas

GN200721-001

2002 APR 18 AM 8:23

*R*

NO. 6123

at Amalia Rodriguez-Mendoza, Clerk M.

OK

#### NATURE OF ACTION

7. This is an action under Chapter 21 of the Texas Labor Code, Section 21.001 et. seq. Texas Labor Code, as amended, to correct unlawful employment practices on the basis of race and color.

#### CONDITIONS PRECEDENT

8. More than 180 days prior to the institution of this lawsuit, Plaintiff filed a charge with the Texas Commission on Human Rights alleging violations of Chapter 21 Employment Discrimination of the Texas Labor Code. A notice of the right to file a civil action has been issued by the Texas Commission on Human Rights. All conditions precedent to the institution of this lawsuit have been fulfilled. This suit is filed within 60 days after the date a notice of the right to file a civil action was received by Plaintiff and is brought within two years of the date the complaint relating to the action was filed.

#### FACTS

7. Plaintiff's Affidavit describing in detail the facts concerning acts and omissions of COMMUNITY OPTIONS, INC., OF TEXAS, in failing to promote Plaintiff into Executive Director positions in Denver, Colorado and Dallas, Texas offices of COMMUNITY OPTIONS, INC., OF TEXAS, for which he held superior qualifications to the non-minority persons selected and had communicated his interest in being considered for said promotions; for falsely accusing Plaintiff of improprieties; and attempting to force him to execute a seriously overreaching non-compete agreement with COMMUNITY OPTIONS, INC., OF TEXAS, which acts constructively discharged him if he wished to keep his employment record free of false records and termination.

#### RACE AND COLOR DISCRIMINATION

10. Defendant, COMMUNITY OPTIONS, INC., OF TEXAS, intentionally engaged in unlawful employment practices involving Plaintiff because of his race and color.

11. Defendant, COMMUNITY OPTIONS, INC., OF TEXAS, intentionally discriminated against Plaintiff in connection with the compensation, terms, conditions and privileges of employment or limited, segregated or classified

Plaintiff in a manner that would deprive or tend to deprive him of any employment opportunity or adversely affect his status because of Plaintiff's race and color in violation of the Texas Labor Code.

12. Defendant, COMMUNITY OPTIONS, INC., OF TEXAS, intentionally classified Plaintiff in a manner that deprived him of an equal employment opportunity that was provided to other non-African American employees similarly situated in violation of the Texas Labor Code.

13. Plaintiff alleges that Defendant, COMMUNITY OPTIONS, INC., OF TEXAS, discriminated against Plaintiff on the basis of race and color with malice or with reckless indifference to the state-protected rights of Plaintiff.

#### CONSTRUCTIVE DISCHARGE

14. COMMUNITY OPTIONS, INC., OF TEXAS made the working conditions so intolerable that Plaintiff felt compelled to resign his position. A reasonable person in the same position would have also felt compelled to resign. Plaintiff suffered damages for which Plaintiff herein sues.

#### RETALIATION BY COMMUNITY OPTIONS, INC., OF TEXAS

15. Plaintiff alleges that Defendant COMMUNITY OPTIONS, INC., OF TEXAS, instituted a campaign of retaliation which included false accusations, pressure to sign an unacceptable non-compete agreement and providing negative reports to potential employers when Plaintiff sought employment following his resignation.

This retaliation was and is due to Plaintiff exercising his rights by opposing a discriminatory practice, making or filing a charge, filing a complaint and testifying, assisting, or participating in an investigation or proceeding regarding an unlawful discriminatory practice. Plaintiff suffered damages for which Plaintiff herein sues.

#### SLANDER BY COMMUNITY OPTIONS, INC., OF TEXAS

16. Plaintiff alleges that Defendant COMMUNITY OPTIONS, INC., OF TEXAS, has made false and misleading statements to investigators from the Texas Department of Human Rights concerning his employment record at COMMUNITY OPTIONS, INC., OF TEXAS and concerning acts or omissions by COMMUNITY OPTIONS, INC., OF TEXAS in regard to said work record, which statements were known or should have been known to be untrue and misleading and were made maliciously



and in reckless disregard to Plaintiff's reputation in the community and in his charges against COMMUNITY OPTIONS, INC., OF TEXAS, as presented in his complaint therein. Plaintiff suffered damages for which Plaintiff now sues.

**INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS  
BY COMMUNITY OPTIONS, INC., OF TEXAS**

17. Defendant COMMUNITY OPTIONS, INC., OF TEXAS, intentionally or recklessly threatened Plaintiff with false accusations concerning his managerial responsibilities and threatened Plaintiff with termination for failing to execute an unacceptable non-compete agreement. Defendant's conduct was extreme and outrageous and proximately caused Plaintiff severe emotional distress. Plaintiff suffered damages for which Plaintiff herein sues.

**LIBEL BY COMMUNITY OPTIONS, INC., OF TEXAS**

17. Defendant COMMUNITY OPTIONS, INC., OF TEXAS, with actual malice published a false statement of fact referring to Plaintiff which injured Plaintiff's reputation. Plaintiff suffered damages for which Plaintiff herein sues.

**TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIP  
BY COMMUNITY OPTIONS, INC., OF TEXAS**

18. Plaintiff alleges that Defendant COMMUNITY OPTIONS, INC., OF TEXAS, tortiously interfered with a prospective business relationship between Plaintiff and at least two prospective employers. Plaintiff alleges that there was a reasonable probability of success in the business relationship. Defendant COMMUNITY OPTIONS, INC., OF TEXAS, willfully and intentionally interfered with said prospective business relationship in order to deprive Plaintiff of such relationship or of the full benefits of such relationship. Such interference was the proximate cause of Plaintiff's damages for which Plaintiff herein sues.

**DAMAGES**

19. Plaintiff sustained the following damages as a result of the actions and/or omissions of Defendant described hereinabove:

- a. Compensatory damages for damage to Plaintiff's professional

reputation;

- b. All reasonable and necessary Attorney's fees incurred by or on behalf of Plaintiff, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just as provided by the Texas Labor Code section 21.259. All conditions precedent have been performed or have occurred;
- c. Back pay from the date that Plaintiff was denied equal pay for equal work and interest on the back pay in an amount to compensate Plaintiff as the Court deems equitable and just as provided by the Texas Labor Code section 21.258;
- d. All reasonable and necessary costs incurred in pursuit of this suit;
- e. Emotional pain;
- f. Expert fees as the Court deems appropriate;
- g. Front pay in an amount the Court deems equitable and just to make Plaintiff whole;
- h. Inconvenience;
- i. Pre and Post judgment interest;
- j. Loss of enjoyment of life;
- k. Mental anguish in the past;
- l. Mental anguish in the future; and
- m. Loss of benefits.

#### EXEMPLARY DAMAGES

20. Plaintiff would further show that the acts and omissions of Defendant complained of herein were committed with malice or reckless indifference to the state-protected rights of the Plaintiff. In order to punish said Defendant for engaging in unlawful business practices and to deter such actions and/or omissions in the future, Plaintiff also seeks recovery from Defendant for exemplary damages as provided by Section 21.2585 of the Texas Labor Code.

#### SPECIFIC RELIEF

21. Plaintiff seeks the following specific relief which arises out of the actions and/or omissions of Defendant described hereinabove:

- a. One millions dollars (\$1,000,000.00)

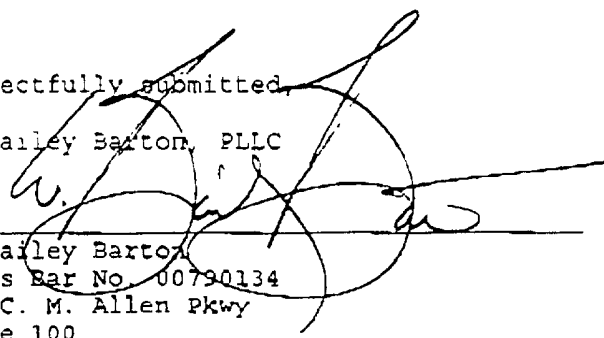
#### PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, DERRICK W. BUNTON,

respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; exemplary damages, excluding interest, and as allowed by Section 21.2585 of the Texas Labor Code, together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

W. Bailey Barton, PLLC

By:   
W. Bailey Barton  
Texas Bar No. 00790134  
300 C. M. Allen Pkwy  
Suite 100  
San Marcos, Texas 78666  
Tel. (512)396-5234  
Fax. (512)396-5318  
Attorney for Plaintiff  
DERRICK W. BUNTON

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY

STATE OF TEXAS       §  
                                     §  
COUNTY OF HAYS     §

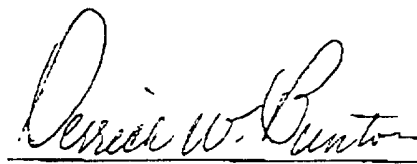
**AFFIDAVIT**

I, Derrick W. Bunton, first having been duly sworn, do hereby depose and say, as follows:

1. That I am a resident of Hays County, Texas and reside at 550 Lame Hoss Lane, Driftwood, Texas 78619.
2. That I am an African-American.
3. That I earned a BS in Psychology, in 1992, and, in 2000, an MA in Health Services Administration from Southwest Texas State University.
4. That I have been employed since 1992 in responsible professional supervisory and managerial positions since 1991 at health service program offices in Central Texas, including San Marcos Treatment Center, Guadalupe County, River Gardens and COMMUNITY OPTIONS, INC. OF TEXAS
5. I am currently employed at Austin Children's Shelter, a Texas MH-MR contractor at a salary of \$34,500.00 per YEAR.
6. That I was a full-time employee of COMMUNITY OPTIONS, INC. OF TEXAS from October 20, 1997 until my resignation became effective January 1, 2001.
7. During my entire term of employment at COMMUNITY OPTIONS, INC. OF TEXAS, I was under the managerial supervision of Richard Hernandez, Executive Director and under the executive supervision of Patricia Moore, Regional Vice-President of COMMUNITY OPTIONS, INC. OF TEXAS, a New Jersey Corporation.
8. In April or May, of 1997, Ms. Moore offered me, and I accepted, a promotion to Executive Director of the Denver, CO office of COMMUNITY OPTIONS, INC. OF TEXAS, for which she, then held executive responsibility. The Denver post would have paid \$45,000.00 per year included housing for one year and airline fare for spouse; free phone..
9. I went on vacation with my family and made arrangement to move to Denver.
10. Upon returning from vacation, I was given a written announcement from Ms. Moore which appointed, Matt Vadavick, a Caucasian person, to the position instead of me. No explanation was offered to me for the sudden reversal.
11. In June, 2000, I spoke with both Ms. Moore and Mr. Hernandez concerning the Executive Director position in Dallas (actually Addison), Texas office of COMMUNITY OPTIONS, INC, and expressed my interest in being promoted to that position, since the current Executive Director, an African American was about to be demoted for poor performance.
12. Contrary to past practice and written policy of COMMUNITY OPTIONS, INC, I saw no "posting" of the position ever made on the intra-company e-mail, but I subsequently learned it was advertised in Dallas newspapers.

13. On January 2, 2001, I received an announcement, by intra-company e-mail, that a non-minority individual was hired from outside COMMUNITY OPTIONS, INC. OF TEXAS to the Executive Director position at the Dallas (Addison), Texas office. I am aware that the compensation for the position at that location is \$ 55,000.00 per year, but was denied the opportunity to compete for it.
14. Beginning in mid-1999, management level personnel at COMMUNITY OPTIONS, INC. OF TEXAS, were sent a non-compete contract to execute, which, after consulting counsel, I declined to execute unless significantly modified.
15. COMMUNITY OPTIONS, INC. OF TEXAS, through their Regional Vice President and, subsequently, in November, 2000, via intra-company e-mail from Mr. Stack, the President and CEO, threatened termination if the contract were not signed as written.
16. In November and December, 2000, I was called into Regional Vice-President Moore's office on two occasions and accused of signing approval of time sheets which were false and in violation of COMMUNITY OPTIONS, INC. OF TEXAS, agreement with the State of Texas. I show her that the signature was not mine. Nonetheless, I received notice that a letter of probation was placed in my employment record at COMMUNITY OPTIONS, INC. OF TEXAS.
17. I subsequently tendered my resignation on January 5, 2001, following the Dallas appointment and the cumulative impacts upon my professional reputation of the actions of Ms. Moore and other executive management of COMMUNITY OPTIONS, INC. OF TEXAS.
18. My personal health deteriorated in the weeks prior to my resignation due to sleeping problems, mental stress and anguish, family disruptions, career concerns and the need to consult counsel to be sure my position was sound.
19. Following my resignation, I had applied to Austin Travis County and Austin State Hospital for employment and my application was being accepted with multiple interviews and warm reception, until my references were checked by the potential employers, then all further pursuit of mutual interests suddenly ceased. COMMUNITY OPTIONS, INC. OF TEXAS is alleged to have caused the changed attitude of potential employers by giving negative reports.
20. I filed an EEOC and Texas Commission on Human Rights (TCHR) Complaint on January 16, 2001. In the course of their investigations, TCHR wrote that COMMUNITY OPTIONS, INC. OF TEXAS stated that I was denied the Dallas position because, "they had offered me four Executive Director positions and I had turned them all down." This statement is patently untrue and is knowingly and intentionally calculated to damage my professional reputation.

Signed this 4th day of March 2002.



Derrick W. Bunton

3- 4-02: 4:14 PM TW, BA LEY B-10H

The foregoing statement and affidavit was acknowledged before me, the undersigned authority, by Derrick W. Bunton, who I had first duly sworn as provided by law, witness my hand and seal this 4th day of March, 2002.



*Sylvia B. Vaught*  
NOTARY PUBLIC- STATE OF TEXAS

CAUSE NO. GN200721

DERRICK W. BUNTON  
Plaintiff,

v.

COMMUNITY OPTIONS, INC. OF TEXAS  
Defendant.

§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

200<sup>th</sup> JUDICIAL DISTRICT

---

DEFENDANT COMMUNITY OPTIONS, INC.'S ORIGINAL ANSWER

---

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Community Options, Inc. (incorrectly referred to in Plaintiff's petition as Community Options Inc., of Texas), Defendant, in the above entitled and numbered cause, and files this its Original Answer and would respectfully show unto the Court as follows:

Defendant generally denies the material allegations of Plaintiff's Original Petition in accordance with Rule 92, Texas Rules of Civil Procedure.

WHEREFORE, Defendant prays that Plaintiff recover nothing for costs and for general relief.

Respectfully submitted,

NAMAN, HOWELL, SMITH & LEE, P.C.  
8310 Capital of Texas Highway, North  
Suite 490  
Austin, Texas 78731  
Telephone No.: (512) 479-0300  
Telecopier No.: (512) 474-1901

BY:

  
P. Clark Aspy

State Bar No. 01394170

20:21:43 -5 PM 4:43

NAMAN, HOWELL, SMITH & LEE, P.C.  
900 Washington Avenue, 7<sup>th</sup> Floor  
P.O. Box 1470  
Waco, Texas 76703-1470  
Telephone No.: (254) 755-4100  
Telecopier No.: (254) 754-6331

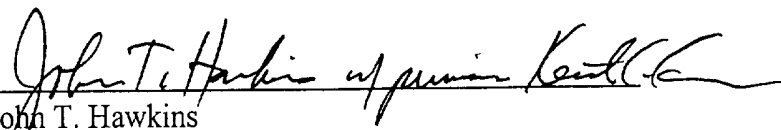
John T. Hawkins  
State Bar No. 09249300

**ATTORNEYS FOR DEFENDANT  
COMMUNITY OPTIONS, INC.**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing *Defendant Community Options, Inc.'s Original Answer* has been sent by certified mail, return receipt requested, to Plaintiff's attorneys of record on this 6<sup>th</sup> day of May, 2002.

W. Bailey Barton  
W. Bailey Barton, PLLC  
300 C. M. Allen Parkway, Suite 100  
San Marcos, Texas 78666

  
John T. Hawkins